REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Memo

CORPORATE INCOME & FRANCHISE TAX SINGLE FACTOR SALES APPORTIONMENT

BACKGROUND:
Under Wisconsin law, multi-state businesses are required to apportion their income among the states in which they operate. Currently, a three-factor (payroll, property and sales) apportionment formula is used to determine the portion of taxable income that is attributable to the state.

Wisconsin also double weights the sales factor (or 50% sales factor). This favors an environment that lends itself to creating jobs and expanding business in their home states because it attaches a greater significance to their non-Wisconsin business as measured by their sales in the apportionment formula.

More recently, however, states are adopting changes that place an even greater emphasis on the sales factor. Rather than double weighting the sales factor, the new trend in corporate income apportionment changes is to adopt a single factor sales apportionment method (or 100% sales factor).

1999 ASSEMBLY BILL 735:
AB 735 moves to a single factor sales corporate apportionment formula for multi-state corporations next biennium. The legislation includes regular corporations such as manufacturers, financial institutions, insurance companies and telecommunications companies. AB 735 was voted out of the Assembly Ways and Means Committee on a 12-1 bipartisan vote.

TALKING POINTS IN SUPPORT OF SINGLE FACTOR:

- **Promotes economic development**. Switching to a single sales factor is about protecting Wisconsin's economic future - keeping jobs here, creating jobs here, and remaining competitive in an increasingly global economy. The adoption of a single sales factor in a business' home state will lend itself to continuous job creation and business expansion. The more heavily the sales factor is weighted in a business's home state, the more it lends itself to job creation and business expansion. (Wisconsin's 50% sales factor was a positive first step; however, tighter competition merits a move to a 100% sales factor).

- **Tax based on sales**. A single-factor sales apportionment state looks only at the market opportunities provided by a state and totally discounts the role of payroll and property. It is based solely on the sales of a company.

- **Benefits companies with substantial Wisconsin Operations.** Corporate taxpayers who are headquartered or have the majority of their facilities in a single-factor sales apportionment state will have a lower effective tax rate than businesses located in a three or four factor state and thus will have a better ability to compete and expand their businesses.

- **Encourages Expansion in Wisconsin**. A single sales factor is commonly understood to "export" the tax burden of a particular state to out-of-state taxpayers and encourage investment in payroll and property in the taxing state. A single sales factor encourages the location of manufacturing facilities as well as corporate, national and regional headquarters in a state.

- **Current law encourages moving jobs out of Wisconsin**. Conversely, by apportioning income to a state in direct proportion to the amount of property and payroll located in the state, the three factor formula imposes a tax penalty on businesses that choose to add jobs or expand their facilities within that state. In

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effect, including property and payroll in an apportionment formula transforms a state corporate income tax into a direct tax on the amount of property and payroll located within the state. (*Economic Impact of Single Factor Sales Apportionment: Job Creation and Tax Revenues*, University of Chicago and University of Wisconsin-Milwaukee)

- **Tax increases for Wisconsin companies operating in single factor states.** Furthermore, Wisconsin's multi-state corporations are penalized in the states that have already passed the single sales factor formula. Most of the surrounding states have either fully adopted or are phasing in a single sales factor apportionment formula. For example, in states where the single sales factor has been adopted and Wisconsin companies do business; some companies experienced a doubling of their tax burden in those states.

- **Neighboring States have single factor**. Illinois, Iowa, Michigan, Minnesota, Missouri and Indiana all weight the sales factor more heavily than Wisconsin. Therefore, if Wisconsin increases the sales factor weight, it would merely be catching up with competition. (*Economic Impact of Single Factor Sales Apportionment: Job Creation and Tax Revenues,* University of Chicago and University of Wisconsin-Milwaukee)

- **Will lead to job creation**. Switching to single factor sales apportionment will have a long-run impact of increasing the number of manufacturing jobs in Wisconsin by about 2.9 percent, or 18,000 new jobs. The number of non-manufacturing jobs would grow by 2.4 percent, or 49,000 jobs. (*Economic Impact of Single Factor Sales Apportionment: Job Creation and Tax Revenues,* University of Chicago and University of Wisconsin-Milwaukee)

  A University of Chicago study estimated an increase of 230,000 jobs (180,000 high paying manufacturing jobs) as a direct result of enactment of the single sales factor method in Illinois. A Beacon Hill Institute study in Massachusetts estimated an increase of 6,300 to 10,400 jobs and wages earned would increase between $300 and $600 million in Massachusetts.

- **Will increase tax revenue**. These newly created jobs would have significant positive impact on the individual income taxes collected by the state, creating an estimated $51 million in tax revenue. (*Economic Impact of Single Factor Sales Apportionment: Job Creation and Tax Revenues*, University of Chicago and University of Wisconsin-Milwaukee)

- **Will increase corporate taxes on non-Wisconsin businesses selling into the state.** The single sales factor would end the advantages given to out-of-state companies selling in Wisconsin, while keeping their capital and labor located in a single sales factor state. The current system allows them to pass more of their tax burden to Wisconsin's businesses through the corporate tax formula.

- **Corporations paying their fair share**. Multi-state corporations already pay more than their fair share of taxes in Wisconsin. According to the Wisconsin Taxpayers Alliance, multi-state corporations account for only 22 percent of the filing corporations, yet paid 55 percent of the total corporate tax liability. If Wisconsin does not move to a single sales factor, multi-state corporations will continue to pay a greater share of these taxes. Wisconsin ranks 14th highest per capita in corporate income taxes.

BASIC CORPORATE INCOME TAX APPORTIONMENT FORMULA

$$\frac{\text{Property in State}}{\text{Property Everywhere}} + \frac{\text{Payroll in State}}{\text{Payroll Everywhere}} + \frac{\text{Sales in State}}{\text{Sales Everywhere}} \;/\; 3 \;=\; \text{Apportionment \%}$$

CURRENT WISCONSIN CORPORATE INCOME TAX APPORTIONMENT FORMULA

$$\frac{\text{Property in State}}{\text{Property Everywhere}} + \frac{\text{Payroll in State}}{\text{Payroll Everywhere}} + \left[\frac{\text{Sales in State}}{\text{Sales Everywhere}}\right] \underset{\text{Double-Weighting}}{2} \; / \; \text{4 Factors} = \text{Apportionment \%}$$

State Taxable Income x Apportionment Factor = Taxable Income in Wisconsin

Taxable Wisconsin Income x State Corporate Tax Rate (7.9%) = State Tax

WISCONSIN EXAMPLE UNDER CURRENT LAW

$$\frac{\$100{,}000}{\$200{,}000} + \frac{\$400{,}000}{\$600{,}000} + \left[\frac{\$50{,}000}{\$300{,}000}\right] 2 \quad / \text{ 4 Factors}$$

Double-Weighting

$$\frac{.5 + .67 + .33}{4} = .375 \quad \text{(Apportionment Factor)}$$

Example:

Assumptions:

Payroll in Wisconsin = $100,000
Payroll Everywhere = $200,000
Property in Wisconsin = 400,000
Property Everywhere = $600,000
Sales in Wisconsin = $50,000
Sales Everywhere = $300,000

Double-Weighting of the Sales Factor

DOUBLE-WEIGHTING SALES FACTOR EXAMPLE

An example of how increased sales weighting can be used to attract manufacturing, consider two corporations that both do business and pay taxes in Illinois and Wisconsin. Assume that Illinois Corporation and Wisconsin Corporation each have taxable income of $1,000,000. Illinois Corporation has 100 percent of its property and payroll located in Illinois and makes 50 percent of its sales in Illinois and 50 percent in Wisconsin. Conversely, Wisconsin Corporation has 100 percent of its property and payroll located in Wisconsin and makes 50 percent of its sales in Wisconsin and 50 percent in Illinois, Both Illinois and Wisconsin use three-factor apportionment formulas with double-weighting on sales. Assume both Illinois and Wisconsin levy a 5 percent tax rate on corporations. Illinois Corporation and Wisconsin Corporation each have a $50,000 state tax liability, which is distributed as follows:

	Illinois Taxes	Wisconsin Taxes	Total Taxes
Illinois Corp.	$37,500	$12,500	$50,000
Wisconsin Corp.	$12,500	$37,500	$50,000
Total Taxes	$50,000	$50,000	

Computations: Illinois Corp. apportions [100% = 100% = 2(50%)] / 4 = 75% of its income to Illinois and apportions [0% = 0% = 2(50%)] / 4 = 25% to Wisconsin. Conversely, Wisconsin Corp. apportions [100% + 100% + 2(50%)] / 4 = 75% of its income to Wisconsin and [0% + 0% + 2(50%)] / 4 = 25% to Illinois.

Source: The Economic Impact of Single Factor Sales Apportionment for the State of Illinois: Job Creation and Tax Revenue (pages 6 and 7).

SINGLE SALES FACTOR EXAMPLE

Now assume that Illinois adopts single-factor sales apportionment, while Wisconsin continues to use its three-factor formula with double-weighting of sales. Now the distribution of taxes will be as follows:

	Illinois Taxes	Wisconsin Taxes	Total Taxes
Illinois Corp.	$25,000	$12,500	$37,500
Wisconsin Corp.	$25,000	$37,500	$62,500
Total Taxes	$50,000	$50,000	

Computations: Illinois Corp. apportions 50% of its income to Illinois and apportions [0% = 0% = 2(50%)] / 4 = 25% to Wisconsin. Conversely, Wisconsin Corp. apportions [100% + 100% + 2(50%)] / 4 = 75% of its income to Wisconsin and 50% to Illinois.

As before, both Illinois and Wisconsin continue to each collect $50,000 in taxes. However, $12,500 of the Illinois tax burden was "exported" to the Wisconsin firm. Illinois Corporation taxes were reduced from $50,000 to $37,500. This effectively lowers the cost of manufacturing in Illinois and increases the cost of manufacturing outside of Illinois.

Source: The Economic Impact of Single Factor Sales Apportionment for the State of Illinois: Job Creation and Tax Revenue (pages 6 and 7).

EXAMPLE OF DOUBLE-WEIGHTING SALES FACTOR VS. SINGLE-WEIGHT VS. SINGLE-FACTOR

Assume: 80% payroll + property in state
20% sales in state

Double-Weighting:

$$\frac{.8 + .8 + 8(.2 \times 2)}{4} = 50\% \text{ of income to be apportioned to Wisconsin}$$

Single-Weight

$$\frac{.8 + .8 + .2}{3} = 60\% \text{ of income to be apportioned to Wisconsin}$$

Single Sales Factor would apportion 20% of income to Wisconsin instead of 50% under current law.

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Testimony of Carl Glowcheski, Tax Manager
Consolidated Papers, Inc.
Wisconsin Rapids, Wisconsin

Senate Committee on Economic Development, Housing and Government Operations
March 29, 2000

My name is Carl Glowcheski. I am the Tax Manager at Consolidated Papers, Inc. headquartered in Wisconsin Rapids. I appreciate this opportunity to meet with you today to briefly discuss the proposed Single Sales Factor legislation (AB 735) that Consolidated Papers feels must be enacted to return Wisconsin to its competitive position.

Consolidated Papers is North America's largest producer of coated printing papers used in magazines, annual reports and advertising. We employ approximately 6,800 people, including 6,450 in Wisconsin and 350 in Minnesota. Consolidated Papers has facilities, employees, suppliers and/or customers located throughout Wisconsin, the United States and Canada.

As you are aware, Wisconsin currently uses a three factor formula consisting of property, payroll and sales to determine Wisconsin taxable income to businesses. Under the proposed legislation, Wisconsin will use only the sales factor to determine the portion of a company's income that is subject to Wisconsin tax.

I am urging you to enact single sales factor legislation because of legislative initiatives in our neighboring states to adopt the single sales factor, or to increase the weighting of sales. Enactment of the single sales factor is necessary in order for Wisconsin to level the playing field and remain competitive. The legislative activity can be summarized as follows:

State	Date Introduced	Enacted	Fully Phased In
IL	October 16, 1997	July 9, 1998	January 1, 2000
MI	May 27, 1999	July 14, 1999	January 1, 1999
MN	April 26, 1999	May 25, 1999	January 1, 2001
IA	1981	1981	January 1, 1981
WI	February 10, 2000		

Our neighbors have increased the weight assigned to sales. The result is that they are a more attractive place to invest in property and people, because an increased sales factor has the effect of shifting these neighboring state's tax burden to Wisconsin-based companies that do business in that state.

For example, a Wisconsin company with $10 million of taxable income, 100% of its property and payroll in Wisconsin and half of its sales in Wisconsin and half in Illinois will have a $182,500 **increase** in Illinois tax as a result of current Illinois corporate tax law. Conversely, an Illinois company with $10 million of taxable income, 100% of its property and payroll in Illinois and half of its sales in Wisconsin and half in Illinois will have a $182,500 **decrease** in Illinois tax. This is because current Illinois law looks only at the sales factor and ignores the property and payroll factors in determining the amount of income that is taxable in Illinois (see Exhibit 1 for detailed calculations). Wisconsin companies with sales into other surrounding states will also see a similar tax increase.

We ask that you enact the single sales factor legislation to ensure that Wisconsin-based companies operate in a tax environment that is fair and equitable and put Wisconsin back on par with its neighboring states.

Thank you for providing me this opportunity to speak with you today.

For additional information regarding this please contact:

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Illinois

	Prior Law		Current Law		Increase (Decrease)	
	WI Corp	IL Corp	WI Corp	IL Corp	WI Corp	IL Corp
Income	10,000,000	10,000,000	10,000,000	10,000,000		
Property	0%	100%	0%	100%		
Payroll	0%	100%	0%	100%		
Sales	50%	50%	50%	50%		
Apportionment	25%	75%	50%	50%		
Taxable Income	2,500,000	7,500,000	5,000,000	5,000,000		
Tax Rate	7.30%	7.30%	7.30%	7.30%		
Tax	182,500	547,500	365,000	365,000	**182,500**	**(182,500)**

FEB 24 2000

AMERITECH'S POSITION ON ASSEMBLY BILL 735
SINGLE SALES FACTOR
FEBRUARY 22, 2000

Ameritech supports Assembly Bill 735 which would move the state to a single sales factor apportionment formula and would include telecommunication companies under single sales.

AB 735 is consistent with our overall tax philosophy of treating the telecommunications industry like other businesses and treating telecommunications carriers alike. Competition can come from so many sources that it makes sense to insure that companies are not placed at an advantage or disadvantage based on state taxing structures. That allows competition, and success or failure, to be based on each competitor's ability to work within the marketplace.

The recently completed transition from a gross receipts tax to a property tax is a good illustration of the efforts of the industry to move away from the utility model to a more competitive approach that taxes telecommunications companies in the same manner as other businesses.

Ameritech believes that AB 735 meets the industry's approach for continued uniformity or symmetry in taxation and avoids the dilemma of tax differentiation with other businesses. Ameritech does not support carve outs because that would again lead us down the path of tax inequities in the marketplace which in the past has been opposed by the industry.

AB 735 also alleviates the current tax inequities affecting companies in Wisconsin, like Ameritech, that invest in jobs and infrastructure in the state.

Ameritech employs approximately 6500 people in this state and last year alone invested $280 million in infrastructure in this state.

Ameritech supports AB 735 because it helps Wisconsin companies that bring jobs and infrastructure to the state, eliminates the tax advantage for those companies that choose to invest less in terms of jobs and infrastructure in this state, encouraging them to increase their investments in Wisconsin.

If you have any further questions, please contact Mary Ruble (608) 282-7878 or Lorenzo Cruz (608) 282-7874.

BIEHN

BIEHN CONSTRUCTION, INC

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February 28, 2000

John Lawler
Biehn Construction, Inc
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Dear John:

Thank you for sending me a copy of the Avrum Lank column on single sales factor apportionment of corporate sales tax.

Bills have recently been circulated in the Senate and the Assembly to create a single sales factor. In fact, the Assembly Committee on Ways and Means passed the Assembly version of this bill, Assembly Bill 735, by a vote of 12-1 on February 23rd. The bill certainly seems to be on the fast track in the Assembly. I do think it will have a harder time passing in the Senate.

I do have some concerns about what this tax change would mean for the rest of Wisconsin's taxpayers, and will certainly keep your concerns in mind if this bill ever does come before us in the Senate.

Again, thank you for sending me a copy of the article. If you have any questions or concerns in the future, please don't hesitate to contact me.

Sincerely,

ROBERT .W WIRCH
State Senator
22nd Senate District

RWW:akm

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–4123/4
JK:kmg:kjf

1999 ASSEMBLY BILL 735

February 10, 2000 – Introduced by Representatives M. Lehman, Jensen, Ziegelbauer, Gard, Plale, Vrakas, Grothman, Riley, Goetsch, Ainsworth, Albers, Duff, Hoven, Hahn, Jeskewitz, Kaufert, Kelso, Klusman, Kreibich, F. Lasee, Musser, Owens, Stone, Suder, Sykora and Walker, cosponsored by Senators Shibilski, Panzer, Grobschmidt, Rude, Farrow, Darling, Huelsman, Roessler, Welch, Zien and Breske. Referred to Committee on Ways and Means.

AN ACT ***to renumber and amend*** 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b) and 71.45 (3) (b); ***to amend*** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d), 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a) and 71.45 (3m); and ***to create*** 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e) and 71.45 (3d) of the statutes; **relating to:** single sales factor apportionment of income for corporate income tax and franchise tax purposes and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

Under this bill, beginning on January 1, 2004, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over the next four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2004, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next four years as the premium factor is increased and becomes the only factor.

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by the department of revenue (DOR). Under the bill, for taxable years beginning after December 31, 2001, and before January 1, 2004, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2003, the income of a financial organization is apportioned by using a sales factor, as determined by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and amended to read:

71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.) Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except air carriers, financial organizations, pipeline companies, public utilities, railroads, sleeping car companies and car line companies there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction.~~ the following:

SECTION 2. 71.04 (4) (a) of the statutes is created to read:

71.04 **(4)** (a) For taxable years beginning before January 1, 2002, an apportionment fraction composed of a sales factor under sub. (7) representing 50% of the fraction, a property factor under sub. (5) representing 25% of the fraction and a payroll factor under sub. (6) representing 25% of the fraction.

SECTION 3. 71.04 (4) (b) of the statutes is created to read:

71.04 **(4)** (b) For taxable years beginning after December 31, 2001, and before January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7) representing 63% of the fraction, a property factor under sub. (5) representing 18.5% of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

SECTION 4. 71.04 (4) (c) of the statutes is created to read:

71.04 **(4)** (c) For taxable years beginning after December 31, 2002, and before January 1, 2004, an apportionment fraction composed of a sales factor under sub. (7) representing 85% of the fraction, a property factor under sub. (5) representing 7.5% of the fraction and a payroll factor under sub. (6) representing 7.5% of the fraction.

SECTION 5. 71.04 (4) (d) of the statutes is created to read:

71.04 **(4)** (d) For taxable years beginning after December 31, 2003, an apportionment fraction composed of the sales factor under sub. (7).

SECTION 6. 71.04 (4) (e) of the statutes is created to read:

71.04 **(4)** (e) For taxable years beginning after December 31, 2001, and before January 1, 2004, the apportionment fraction for the remaining net income of a financial organization shall include a sales factor that represents more than 50% of the apportionment fraction, as determined by rule by the department. For taxable years beginning after December 31, 2003, the apportionment fraction for the remaining net income of a financial organization is composed of a sales factor, as determined by rule by the department.

SECTION 7. 71.04 (5) (intro.) of the statutes is amended to read:

71.04 **(5)** PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable years beginning before January 1, 2004:

SECTION 8. 71.04 (6) (intro.) of the statutes is amended to read:

71.04 **(6)** PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years beginning before January 1, 2004:

SECTION 9. 71.04 (7) (d) of the statutes is amended to read:

71.04 **(7)** (d) Sales, other than sales of tangible personal property, are in this state if the income–producing activity is performed in this state. If the income–producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by ~~sub.~~ s. 71.04 (6), 1997 stats.

SECTION 10. 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and amended to read:

71.04 **(8)** (b) 1. ~~"Public~~ For taxable years beginning before January 1, 2002, "public utility", as used in this section, means any business entity as described under subd. 2. and any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam, the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. ~~"Public~~

2. In this section, for taxable years beginning after December 31, 2001, "public utility" ~~also~~ means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

SECTION 11. 71.04 (8) (c) of the statutes is amended to read:

71.04 **(8)** (c) The net business income of railroads, sleeping car companies, car line companies, pipeline companies, financial organizations, air carriers and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state.

SECTION 12. 71.04 (10) of the statutes is amended to read:

71.04 **(10)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident individual or nonresident estate or trust engaged in business ~~within~~ in and ~~without the~~ outside this state ~~of Wisconsin~~ and required to apportion its income as provided in this section, it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or inequitable final average ratio because of the fact that such nonresident individual or nonresident estate or trust does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2003.

SECTION 13. 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and amended to read:

71.25 **(6)** ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA. (intro.) Corporations engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such corporation within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except air carriers, financial organizations, pipeline companies, public utilities, railroads, sleeping car companies, car line companies and corporations or associations that are subject to a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:

SECTION 14. 71.25 (6) (a) of the statutes is created to read:

71.25 **(6)** (a) For taxable years beginning before January 1, 2002, an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.

SECTION 15. 71.25 (6) (b) of the statutes is created to read:

71.25 **(6)** (b) For taxable years beginning after December 31, 2001, and before January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9) representing 63% of the fraction, a property factor under sub. (7) representing 18.5% of the fraction and a payroll factor under sub. (8) representing 18.5% of the fraction.

SECTION 16. 71.25 (6) (c) of the statutes is created to read:

71.25 **(6)** (c) For taxable years beginning after December 31, 2002, and before January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9) representing 85% of the fraction, a property factor under sub. (7) representing 7.5% of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

SECTION 17. 71.25 (6) (d) of the statutes is created to read:

71.25 **(6)** (d) For taxable years beginning after December 31, 2003, an apportionment fraction composed of the sales factor under sub. (9).

SECTION 18. 71.25 (6) (e) of the statutes is created to read:

71.25 **(6)** (e) For taxable years beginning after December 31, 2001, and before January 1, 2004, the apportionment fraction for the remaining net income of a financial organization shall include a sales factor that represents more than 50% of the apportionment fraction, as determined by rule by the department. For taxable years beginning after December 31, 2003, the apportionment fraction for the remaining net income of a financial organization is composed of a sales factor, as determined by rule by the department.

SECTION 19. 71.25 (7) (intro.) of the statutes is amended to read:

71.25 **(7)** PROPERTY FACTOR. (intro.) For purposes of sub. (5) <u>and for taxable years beginning before January 1, 2004</u>:

SECTION 20. 71.25 (8) (intro.) of the statutes is amended to read:

71.25 **(8)** PAYROLL FACTOR. (intro.) For purposes of sub. (5) <u>and for taxable years beginning before January 1, 2004</u>:

SECTION 21. 71.25 (9) (d) of the statutes is amended to read:

71.25 **(9)** (d) Sales, other than sales of tangible personal property, are in this state if the income–producing activity is performed in this state. If the income–producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by ~~sub.~~ <u>s. 71.25</u> (8)<u>, 1997 stats</u>.

SECTION 22. 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and amended to read:

71.25 **(10)** (b) 1. In this section, for taxable years beginning before January 1, 2002, “public utility” means any business entity as described under subd. 2. and any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. ~~“Public~~

2. In this section, for taxable years beginning after December 31, 2001, “public utility” ~~also~~ means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity’s rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

SECTION 23. 71.25 (10) (c) of the statutes is amended to read:

71.25 **(10)** (c) The net business income of railroads, sleeping car companies, car line companies, pipeline companies, financial organizations, air carriers and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state.

SECTION 24. 71.25 (11) of the statutes is amended to read:

71.25 **(11)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation engaged in business ~~within~~ in and ~~without the~~ outside this state of Wisconsin and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2003.

SECTION 25. 71.45 (3) (intro.) of the statutes is amended to read:

71.45 **(3)** APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d), to determine Wisconsin income for purposes of the franchise tax, domestic insurers ~~not engaged in the sale of life insurance but which~~ that, in the taxable year, have ~~collected~~ received premiums, other than life insurance premiums, written ~~on subjects of~~ for insurance on property or risks resident, located or to be performed outside this state~~, there~~ shall ~~be subtracted from~~ multiply the net income figure derived by application of sub. (2) ~~(a) to arrive at Wisconsin income constituting the measure of the franchise tax an amount calculated by multiplying such adjusted federal taxable income~~ by the arithmetic average of the following 2 percentages:

SECTION 1751. 71.45 (3) (a) of the statutes is amended to read:

71.45 **(3)** (a) ~~The~~ Subject to sub. (3d), the percentage ~~of total~~ determined by dividing the sum of direct premiums written ~~on all property and risks~~ for insurance other than life insurance, on subjects of insurance resident, located or to be performed in this state, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located or to be performed in this state, by the sum of direct premiums written for insurance on all property and risks, other than life insurance, wherever located ~~during the taxable year, as reflects~~, and assumed premiums written ~~on insurance~~ for reinsurance on all property and risks, other than life insurance, ~~where the subject of insurance was resident, located or to be performed outside this state~~ wherever located. In this paragraph, "direct premiums" means direct premiums as reported for the taxable year on an annual statement that is filed by the insurer with the commissioner of insurance. In this paragraph, "assumed premiums" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on an annual statement that is filed with the commissioner of insurance.

SECTION 26. 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and amended to read:

71.45 **(3)** (b) 1. ~~The~~ Subject to sub. (3d), the percentage ~~of~~ determined by dividing the payroll, exclusive of life insurance payroll, paid in this state in the taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year ~~as reflects such compensation paid outside this state. Compensation~~.

2. Under subd. 1., compensation is paid ~~outside~~ in this state if the individual's service is performed entirely ~~outside~~ in this state; or the individual's service is performed both ~~within and without~~ in and outside this state, but the service performed ~~within~~ outside this state is incidental to the individual's service ~~without~~ in this state; or some service is performed ~~without~~ in this state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is ~~without~~ in this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is ~~outside~~ in this state.

SECTION 27. 71.45 (3d) of the statutes is created to read:

71.45 **(3d)** PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after December 31, 2001, and before January 1, 2003, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by an apportionment fraction composed of the percentage under sub. (3) (a) representing 63% of the fraction and the percentage under sub. (3) (b) 1. representing 37% of the fraction.

(b) For taxable years beginning after December 31, 2002, and before January 1, 2004, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by an apportionment fraction composed of the percentage under sub. (3) (a) representing 85% of the fraction and the percentage under sub. (3) (b) 1. representing 15% of the fraction.

(c) For taxable years beginning after December 31, 2003, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by the percentage under sub. (3) (a).

SECTION 28. 71.45 (3m) of the statutes is amended to read:

71.45 **(3m)** ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3d), the arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the net income figure arrived at by the successive application of sub. (2) (a) and (b) with respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have ~~collected~~ received premiums, other than life insurance premiums, written ~~upon~~ for insurance~~, other than life insurance, where the subject of such insurance was~~ on property or risks resident, located or to be performed outside this state, to arrive at Wisconsin income constituting the measure of the franchise tax.

SECTION 29. Nonstatutory provisions.

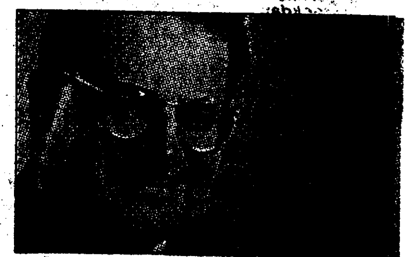
(1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The department of revenue shall submit in proposed form rules related to the apportionment of the income of financial organizations under sections 71.04 (4) (e) and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this subsection.

SECTION 30. Initial applicability.

(1) APPORTIONMENT FACTORS. This act first applies to taxable years beginning after December 31, 2001.

(END)

Like your rebate? A better deal's on tap for big business



AVRUM D. LANK

Politics is about timing, which is why Gov. Tommy G. Thompson picked last week to resurrect his proposal for a single sales factor for the corporate income tax.

If enacted, the change would be paid for through individual income and property taxes. So what better time to bring it up than when those individuals are distracted by rebate checks?

Remember those checks when you sit down to fill out state income tax forms later this year. Missing will be the line for the rent and property tax credit, eliminated by Thompson and the Legislature as a way to fatten the rebates.

But eliminating the credit, which will cost the average Wisconsin taxpayer upwards of $150 this year alone, will pale next to the consequences for individuals of going to single factor.

On the surface, a change to single factor seems benign and obscure.

When a company does business in more than one state, Wisconsin has to decide how much of its income is subject to tax by Madison.

Now, the state considers three factors — Wisconsin sales, Wisconsin employment and property in Wisconsin. Under the single-factor plan proposed by Thompson, only Wisconsin sales would be considered. Thus, single factor would lower the tax burden of companies with employment and property in the state but would not increase it for companies that only sell products here.

In all, it has been estimated that single factor would save state corporations about $80 million a year, or 13% of their Wisconsin income tax bills.

Unless state spending were cut by the same amount — and how likely is that? — the $80 million would have to be raised from other sources, which in Wisconsin means the sales and income taxes.

In the context of $3 billion in annual sales tax and $5 billion in annual personal income tax collections, $80 million is not much.

But the impact of Thompson's single-factor proposal is more far-reaching than $80 million.

Single factor is not a new idea — the governor proposed it about a year ago when he presented his biennial budget to the Legislature. But it was twinned with another proposal — combined reporting for state companies.

Now, every company doing business in Wisconsin files its own income tax return, even subsidiaries of the same corporation.

However, subsidiaries of Wisconsin companies that do not do business in Badgerland file nothing with Madison.

Lawyers and accountants have used this part of the law to move a lot of taxable income out of Wisconsin. For example, many state banks have placed income-producing assets such as stocks and bonds in subsidiaries in Nevada, which has no corporate income tax. Thus, the income those assets produce is never taxed by any state.

In more recent days, Wisconsin companies have been setting up out-of-state subsidiaries to hold patents, trademarks and logos.

Those out-of-state subsidiaries then charge royalties to their siblings in Wisconsin. To the Wisconsin companies, the royalties are a tax-deductible expense. The income they generate to the out-of-state company is not taxed by Madison, even though both companies are owned by a Wisconsin parent.

Under combined reporting, the parent would have to file a return including the income of all its subsidiaries. That would raise the tax bill of state companies.

When he presented his budget last year, Thompson said that either both combined reporting and single factor would be enacted or neither would be. When the business community managed to kill combined reporting by lobbying the Legislature, Thompson let single factor die also.

Business never stopped lobbying for single factor, however, and Thompson has listened. Now, he is prepared to let single factor be enacted without combined reporting.

If that happens, Wisconsin's tax system will become a joke to large companies. The corporate income tax will become increasingly hollow as lawyers and accountants use single factor without combined reporting to build loopholes large enough for the fattest bottom lines to blast through.

So savor those rebate checks. They may be the last tax favor Madison does for individuals for a long time.

JAN 21 2000

Please fight to Stop this

Snap-on Incorporated

Date: March 29, 2000

To: Wisconsin Senate Committee on Economic Development

From: Steven K. Bartels, Director, Corporate Taxes – Snap-on Incorporated

Re: Support for Single Sales Factor Legislation (AB 735)

Background:

Snap-on Incorporated is a leading global developer, manufacturer and marketer of tool, diagnostic and equipment solutions for professional tool users headquartered in Kenosha, Wisconsin. The Snap-on family of companies achieved $1.9 billion of world-wide sales in 1999. Snap-on has a sizeable presence in the state of Wisconsin and makes a sizable contribution to Wisconsin's strong economy. Snap-on employs approximately 1,650 people at nine facilities located throughout the state. The company's facilities include corporate and general offices in Kenosha; manufacturing facilities in Baraboo, East Troy, Elkhorn, Kenosha, Milwaukee and Waukesha; and a sales branch in Milwaukee.

The Snap-on Wrench Company was founded in Milwaukee in 1920. Within a few years, growth strained the Milwaukee facilities the company rented. In 1929, Snap-on Wrench Company selected a site in Kenosha, Wisconsin, for its new headquarters. Ideally situated between Milwaukee and Chicago, the Kenosha location meant the company could put down roots. Today's product lines include hand and power tools, diagnostics and shop equipment, tool storage products, diagnostics software and other solutions for the transportation service, industrial and other commercial industries. Products are sold through its franchise dealer van, company direct sales and distributor channels. Worldwide, the company employs approximately 14,000.

Snap-on's Position on the Proposed Single Sales Factor Legislation:

In today's global economy, companies must work harder and smarter to stay competitive. This includes consideration of which states provide the most favorable tax environment for expanding or relocating business operations. In this competitive environment, businesses have become dynamic organizations that must achieve significant growth to survive. With continued growth comes the decision of where to locate the people and property necessary to support the growth. With our bordering states' aggressive modification of their own corporate income tax apportionment formulae, Wisconsin must act promptly to remain competitive and avoid revenue and job losses to other states.

Snap-on Incorporated
P.O. Box 1430 • Kenosha, WI 53141-1430 • FAX: 414-656-6146 • 414-656-6144

SNAP-ON STRONGLY SUPPORTS SINGLE SALES FACTOR LEGISLATION IN WISCONSIN FOR THE FOLLOWING REASONS:

- It promotes economic development in Wisconsin. The adoption of this legislation would lend itself to continuous job creation and business expansion in Wisconsin. These jobs will increase other Wisconsin tax collections from sources such as personal income taxes, property taxes, sales taxes, etc.

- It puts Wisconsin on a level playing field with neighboring states. Illinois, Iowa, Michigan, and Minnesota all weigh the sales factor more heavily than Wisconsin. This legislation would level the playing field by shifting more of the corporate income tax burden back to companies located in these and other states. These states have helped their in-state business by shifting a significant portion of their corporate tax burden to Wisconsin based companies.

- This legislation would help stop the trend of moving jobs out of Wisconsin. Snap-on supports this legislation, as it would make it more cost effective to expand our business operations where our world headquarters is located -- Kenosha, Wisconsin!

- We believe that this legislation is not only good for Wisconsin based companies, but that it is good for the state as well. According to the UW-Milwaukee/Univ. of Chicago study, the net impact of this legislation would be to increase total tax revenues collected by Wisconsin. This increased revenue will help keep Wisconsin as a great place to live, work and raise a family.

- It reduces in-state businesses' overall state income tax burden, which improves their operating results and provides additional capital for future expansion. Helping to improve the strength of in-state businesses, is good for everyone in Wisconsin. This legislation would improve the proposition for future expansion in Wisconsin.

- This legislation promotes tax simplification. Corporations' compliance costs for gathering information necessary to calculate their tax liability will be reduced. Likewise, the tax authorities will have an easier time administering the tax laws.

Please feel free to contact me to further discuss this legislation and the importance is has to Wisconsin based businesses. I can be reached by the following means:

- Phone: (262) 656-4745
- Fax: (262) 656-4807
- E-mail: steven.k.bartels@snapon.com

Chairman Wirch & Members of the Committee:

Thank you for the opportunity to testify on this important issue to Wisconsin corporations.

My name is Cindy Rooks. I am the Director of Taxes and Risk Management at Harley-Davidson. I am also the Chairperson of the Tax Committee of the Wisconsin Manufacturers & Commerce. As a representative of both groups, I strongly support Single Factor Sales Apportionment for Wisconsin.

Harley-Davidson is a Wisconsin corporation which has just completed a successful year with record earnings. Contributing to this record are a significant number of employees and assets here in Wisconsin. During the past two years, the number of Harley-Davidson employees in Wisconsin has increased by almost 500. In addition, Harley-Davidson has added more than $260 million in assets in Wisconsin during this two-year timeframe. Also, every five years we invite members of our Harley-Davidson family home to Wisconsin. In fact, our 95th anniversary brought over 150,000 members to Wisconsin in 1998. We are proud to be a Wisconsin corporation.

Harley-Davidson is in the process of developing its revised long-term plan. This plan is expected to continue the growth of Harley-Davidson. To support this growth, there will be increases in employees and assets. While taxes do not drive decisions on location, taxes are one important consideration when deciding where to target Harley-Davidson's growth. Harley-Davidson's growth potential in Wisconsin could be jeopardized by increased taxes. Single-factor sales apportionment factor in Wisconsin will put Harley-Davidson's Wisconsin locations on similar footing with Harley-Davidson's Missouri operations which has single-factor sales apportionment.

Currently, Harley-Davidson also pays income taxes in many other states. Several states including Massachusetts, Michigan, and Illinois, have implemented single-factor sales apportionment. Since Harley-Davidson has minimal assets and payroll in these states, Harley-Davidson's tax liability to these states has increased significantly even though our activities in those states has not changed. Harley-Davidson's tax liability will continue to increase unnecessarily as long as other states implement single-factor sales apportionment and Wisconsin does not. Support Wisconsin based corporations such as Harley-Davidson in not paying more state tax because other states are more progressive in implementing single-factor sales apportionment than Wisconsin.

Harley-Davidson as well as the member corporations of the Wisconsin Manufacturers & Commerce strongly support single-factor sales apportionment for Wisconsin. Keep jobs in Wisconsin. Provide an environment in Wisconsin to encourage the growth of jobs and businesses in Wisconsin. Help Wisconsin based corporations only pay their fair share of taxes. Support single factor sales apportionment in Wisconsin by voting in favor of AB 735.

Cynthia A. Rooks
Director of Taxes & Risk Management
Harley-Davidson, Inc.